

## **The complaint**

Mr S complains that Monzo Bank Ltd won't reimburse him the money he transferred to a fraudster.

## **What happened**

Mr S has explained that he received contact from who he believed was a recruitment company (but was in fact a fraudster) via an instant messaging app, offering remote working for as little as 30 minutes a day to generate some additional income. Mr S was told that he would need to complete a series of 'tasks', but that in order to unlock these tasks, he first needed to pay a deposit through a cryptocurrency platform.

Mr S states he set up an account on the company's platform and was reassured by how professional it appeared. He also researched the company online and found what appeared to be a genuine website. On this basis Mr S began making payments to the firm, believing he was unlocking tasks. These payments began through another of Mr S's banking providers and Mr S has explained he received £300 in perceived 'commission', which encouraged him to continue.

Mr S then made two faster payments towards the scam through his Monzo account, both on 11 April 2023. The first transfer of £4,500 was to purchase cryptocurrency via a 'peer to peer' market, whereby Mr S' funds were sent internationally to an individual in exchange for cryptocurrency, which Mr S then transferred to the fraudster. The second payment of £4,321 was sent via 'open banking' to a cryptocurrency wallet in Mr S' own name, then again onto the fraudster. Mr S was told he needed to send the deposits as cryptocurrency, as his money was being invested and that he would receive a return.

Mr S realised he'd been the victim of a scam when he attempted to make a further withdrawal, but the fraudster kept asking him to make further deposits first. He reported the matter to Monzo on 11 May 2023.

Monzo investigated Mr S' claim but stated that as the first payment was sent internationally, and the second payment went to a cryptocurrency wallet in Mr S' own name, it wasn't liable to reimburse him. It also contacted the beneficiary accounts where Mr S' funds were transferred, but unfortunately no funds remained.

Mr S, through a representative, referred the matter to our service. He argued that the first payment he made to the scam was high value, to a new payee and an international payment, which should have caused concern to Monzo and resulted in intervention. An investigator considered Mr S' complaint and upheld it in part. She considered that Mr S' first payment made towards the scam was sufficiently out of character for the account and, had Monzo intervened before processing the payment, the scam would've been uncovered and prevented. She also considered that there was sufficient cause for Mr S to be concerned about the plausibility of the scam, and so recommended that both parties share a 50% liability for the losses Mr S incurred.

Monzo disagreed with the investigator's view. It believed the principles behind the Supreme Court judgement in the case of Philipp vs Barclays Bank Plc UK were applicable to this case, stating that as the court have upheld that they expect banks to carry out customers' wishes, it's therefore inappropriate for Monzo to decline to do so. It also didn't consider that Mr S'

losses occurred from his Monzo account as the payments were made to Mr S' own cryptocurrency wallet.

As Monzo disagreed with the investigator's view, the complaint has been referred to me for a decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr S' account is that he is responsible for payments he's authorised himself. The Contingent Reimbursement Model (CRM) Code can provide additional protection for the victims of APP scams such as this was. However, international payments are not within the scope of the CRM Code and neither are payments made to a fraudster via cryptocurrency. So I cannot fairly apply the terms of the CRM code to any of the payments Mr S has made.

In reaching my decision, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Monzo's December 2021 terms and conditions gave it rights (but not obligations) to block payments where it suspects criminal activity on the account. So, the starting position at law was that:

- Santander was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it considered criminal activity on the account.
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.

Whilst the current account terms did not oblige Monzo to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Monzo from making fraud checks before making a payment.

And whilst Monzo was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements, and what I consider to have been good practice at the time, it should *fairly and reasonably* have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

In summary, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Monzo should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

*Should Monzo have fairly and reasonably made further enquiries before processing Mr S' faster payments?*

It isn't in dispute that Mr S has fallen victim to a cruel scam here, nor that he authorised the disputed payments he made from his account, but I've thought about whether Monzo should have reasonably intervened in any of these payments.

I need to take into account that Monzo needs to strike a balance between countering the risk of fraud and not unduly inconveniencing customers making genuine transactions. Having reviewed Mr S' account statements for the 12 months prior to the scam, I can see that this isn't an account Mr S uses for day-to-day spending – in fact, there are only seven transactions from the prior 12 months that weren't transfers directly between Mr S' own accounts and each of these was for less than £100. Therefore I think the first payment Mr S made towards the scam was sufficiently out of character for Mr S, being the largest payment in that timeframe, as well as an international payment to a newly set up payee.

Had Monzo intervened before allowing this payment to be processed, I'm persuaded that the scam would most likely have come to light. I say this because Mr S has not suggested that he was told to lie about the nature of the payments he was making, and therefore I see no reason why he wouldn't have been honest about what he was doing. As scams of this nature are becoming more prevalent, I think Monzo would've been able to identify that Mr S' circumstances closely matched the hallmarks of a job scam - and the scam would've been uncovered.

In reaching my decision about what is fair and reasonable, I have also taken into account that for the second scam payment, Mr S transferred the money to a wallet in his own name, rather than directly to the fraudster, so he remained in control of his money after he made the payment from his Monzo account, and it took further steps before the money was lost to the fraudsters.

But for the reasons I have set out above, I am satisfied that it would be fair to hold Monzo responsible for Mr S' losses (subject to any deductions that I'll comment on below). As I have explained, the potential for multi-stage scams ought to have been well known to Monzo and, as a matter of good practice, Monzo should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams. I'm therefore satisfied it is fair to hold Monzo responsible, at least in part, for Mr S' losses.

*Should Mr S bear any responsibility for his losses?*

There is a general principle that consumers must take responsibility for their decisions, and I have duly considered whether Mr S should be liable in part for his losses, by way of

contributory negligence. In the circumstances of this case, I'm satisfied he should. I say this because I consider there to have been enough warning signs that he was being scammed, which Mr S does not appear to have reasonably acknowledged or acted upon.

Mr S has made substantial 'deposits' for what he believed was a job opportunity, not just from this account in question but from another bank provider also, with only a small proportion having been returned as 'commission'. I think Mr S ought to have been concerned at the very nature of this proposal - paying to participate in a job is a complete inversion of the employer-employee relationship and would strike most people as an unusual arrangement.

I also don't think the fraudster gave a particularly plausible explanation for why Mr S had to make the deposits via cryptocurrency. Mr S has suggested that the company he believed he was paying was using the funds to invest, but I haven't seen any clear explanation of why it was investing Mr S' deposits, despite the agreement being that they would be returned to him, or why the alleged firm couldn't convert funds to cryptocurrency itself.

Based on the deposits Mr S was paying within a short period of time, I also think it's likely the returns he was being promised for a data processing role that required minimal time taken on it were unrealistic, and this also ought to have caused concern for Mr S that this opportunity was too good to be true.

I think there were sufficient red flags here that reasonably ought to have led Mr S to have acted far more cautiously than he did. So, I think Mr S did have a role to play in what happened and I think that the amount Monzo should pay to him in compensation should fairly and reasonably be reduced by 50% to reflect that role.

### *Recovery*

Finally, I've thought about whether Monzo could've done more to recover the funds after Mr S reported the fraud. I think it's arguable that Monzo could've acted sooner based on the evidence it's provided. However, in this circumstances of this particular case I don't think it's likely that swifter action on Monzo's part would've made a difference. I say that because for the first payment Mr S made, his funds were transferred to what appears to be an innocent third party, in exchange for cryptocurrency and it was this cryptocurrency that was transferred on to the fraudster. Therefore Monzo wouldn't have been able to recover funds from the individual who Mr S actually sent his money to, and tracing and returning cryptocurrency has minimal prospects of success (which is why fraudsters are often choosing this method to bypass recovery obstacles.)

Similarly with Mr S' second payment, funds went to Mr S' own cryptocurrency wallet, before being transferred to the fraudster as cryptocurrency. Therefore for the same reasons as above, Monzo would also have had minimal chances of recovering these funds.

## **My final decision**

My final decision is that I uphold Mr S' complaint in part against Monzo Bank Ltd. I required Monzo Bank Ltd to:

- Refund 50% of both payments Mr S made from his Monzo account to the fraudster
- Apply 8% simple interest, from the date Mr S made the payments until the settlement date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 April 2024.

Kirsty Upton  
**Ombudsman**